Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in the State of South Carolina	)))))	CC Docket No. 97-208

COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION

APPENDIX - VOLUME VIII

APPENDIX TO COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION

TAB	AFFIDAVIT	SUBJECT(S) COVERED
A	William J. Baumol	Public Interest
B	Robert H. Bork	Public Interest
C	Jay M. Bradbury	Operations Support Systems
D	James Carroll	AT&T Market Entry
E	Ray Crafton	Unbundled Network Elements: Combinations
F	R. Glenn Hubbard and William H. Lehr	Public Interest
G	Patricia A. McFarland	Resale Pricing and Restrictions
H	Patricia A. McFarland	Section 272 compliance
I	Kenneth P. McNeely	SCPSC Proceedings
J	C. Michael Pfau	Operations Support Systems: Performance Measurements
K	James A. Tamplin, Jr.	Unbundled Network Elements
L	Don J. Wood	Unbundled Network Elements: Pricing

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AFFIDAVIT OF

KENNETH P. MCNEELY

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT I

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AFFIDAVIT OF KENNETH P. MCNEELY ON BEHALF OF AT&T CORP.

I, Kenneth P. McNeely, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Kenneth P. McNeely. My business address is 1200 Peachtree Street, Suite 4036, Atlanta, Georgia 30309.

2. I am employed by AT&T Corp. ("AT&T") as a Senior Attorney in its Law & Government Affairs Division for the Southern Region. My responsibilities include representation of AT&T in regulatory proceedings in the Southern Region states, including South Carolina. I was the lead attorney representing AT&T in the arbitration proceeding between AT&T and BellSouth Telecommunications, Inc. ("BellSouth") before the South Carolina Public Service Commission ("SCPSC") (the "arbitration proceeding") and was present during the arbitration hearing. See Petition of AT&T Communications of the Southern States, Inc. For Arbitration of an Interconnection Agreement With BellSouth Telecommunications, Inc., SCPSC Docket No. 96-358-C, Order No. 97-189 (March 10,

1997)("SCPSC Arbitration Order").[1] I was also the lead AT&T attorney in the recent proceeding before the SCPSC addressing BellSouth's potential application to the Commission for authority to provide in-region, interLATA services in South Carolina (the "state 271 proceeding") and was present during the entirety of that proceeding. See Entry of BellSouth Telecommunications, Inc., into InterLATA Toll Market, SCPSC Docket No. 97-101-C, Order No. 97-640 (July 31, 1997)("SCPSC SGAT Order"). I have personal knowledge of all of the events described in this affidavit.

INTRODUCTION AND SUMMARY

3. The Telecommunications Act of 1996 (the "Act") requires state commissions to fulfill their role under section 271(d)(2)(B) by "verify[ing]" that the BOC meets the conditions set forth in Section 271(c).[2] In its Ameritech Order, the Commission stressed the importance of state commissions developing "a comprehensive factual record" concerning both BOC compliance with the requirements of section 271 of the Act and the

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1 The SCPSC Arbitration Order is Attachment 1 hereto.

2 As early as February, 1997, state commissions were put on notice by Chairman Hundt that they should conduct "a credible state fact-finding process" to assist in 271 proceedings. The Chairman emphasized that "[t]he quality of the record compiled by each state commission may be more important than the vote that commission casts." Speech of Reed Hundt to NARUC Communications Committee, Washington, D.C., Feb. 24, 1997. In its order denying SBC's 271 application, the Commission stressed the "very fact-specific determinations" that are required of state commissions and refused to defer to the Oklahoma Commission where it failed to state "what specific facts it relied on" in making its verifications under the Act. Application by SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (June 26, 1997) ¶¶ 14-16, 60.

status of local competition. In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) ("Ameritech Order"), ¶ 30. The Commission recognized, however, that some state commissions would develop a comprehensive record, while others would undertake only a "cursory review" of BOC compliance with section 271. Id. The Commission has discretion to determine what deference it should accord a state commission's determination. Id. The Commission will consider carefully determinations of fact by the state that are supported by a detailed and extensive record. Ultimately, it is the Commission's role to determine whether the factual record demonstrates that the requirements of section 271 have been met. Id.

4. Throughout the brief it submitted in support of its application, BellSouth refers to the SCPSC's "exhaustive inquiry" (Br., at ii) and "in-depth analysis" (id., at 3) purportedly supporting the SCPSC's determination that BellSouth has met the competitive checklist. BellSouth therefore contends that the SCPSC's findings are entitled to "great weight" (id., at 18), and, indeed, that the Commission must give greater weight to the SCPSC's determinations than those of the Department of Justice, which must be accorded "substantial weight" under section 271 (id., at 18 n.13; 47 U.S.C. § 271(d)(2)(A)).

5. The purpose of my affidavit is to set forth certain facts about the proceedings held by the SCPSC to assist the Commission in determining the weight it should give to the SCPSC's conclusions. Ameritech Order, ¶ 30. This determination

would appear to be especially critical in this proceeding, for BellSouth (Br. at 4) has asserted that the SCPSC's findings "provide the framework" for its application. In particular, my affidavit shows that:

- The SCPSC disagrees with the structure of and policies reflected in the Act, which continues the existing prohibition on provision of in-region interLATA services for a BOC, and allows for that prohibition to be lifted only upon a showing that the markets for local and exchange access services are irreversibly open to competition. The SCPSC believes as a policy matter that BellSouth should be permitted immediately to provide such services without regard to the existence of or even the potential for local competition.
- Although the Act prohibits a state commission from approving an SGAT unless it complies with the requirements of Sections 251 and 252, including regulations that the Commission is authorized to adopt thereunder, the SCPSC has approved BellSouth's SGAT and certified that BellSouth has complied with the competitive checklist, notwithstanding the fact that, as BellSouth itself admits, the SGAT on its face violates the Commission's regulations in several critical respects. Indeed, since the Commission issued its Local Competition Order, the SCPSC has, at BellSouth's behest, consistently ignored it.
- Far from undertaking an "in-depth analysis of BellSouth's checklist

offerings," as BellSouth asserts, the SCPSC simply "rubber-stamped" the SGAT and BellSouth's section 271 application, as evidenced by the fact that the SCPSC adopted, virtually verbatim (including typographical errors), the proposed order submitted by BellSouth. The order makes "findings" with regard to OSS, pricing, CLEC entry plans and other matters that ignore or blatantly misstate the record.

- The regulatory environment in South Carolina is hostile to local competition and CLECs. For example, members of the SCPSC publicly proclaimed their delight when informed that the resale discount it had approved in South Carolina was one of the smallest in the nation.

I. THE SCPSC'S VIEWS ON THE INTERLATA PROHIBITION.

6. Section 271 of the Act continues the prohibition in the Modification of Final Judgment ("MFJ") against a BOC providing in-region interLATA services. Section 271 also provides, however, that the prohibition may be lifted when, and only when, inter alia, the petitioning BOC demonstrates that it has fully implemented the Act's competitive checklist, and the Commission finds that the provision of such services by the BOC is consistent with the public interest.

7. The Commission has recognized the importance of the structure of the Act, including in particular the requirement that the BOC first "fully implement" the competitive checklist prior to receiving interLATA authorization. The Commission has

emphasized that, in enacting Section 271, "Congress required BOCs to demonstrate that they have opened their local telecommunications markets to competition *before* they are authorized to provide in-region long distance services." Ameritech Order, ¶ 14 (emphasis in original). The Commission then elaborated on the sequencing of entry under Section 271:

> Through the competitive checklist and the other requirements of section 271, Congress has prescribed a mechanism by which the BOCs may enter the in-region long distance market. This mechanism replaces the structural approach that was contained in the MFJ by which BOCs were precluded from participating in that market. Although Congress replaced the MFJ's structural approach, Congress nonetheless acknowledged the principles underlying that approach -- that BOC entry into the long distance market would be anticompetitive unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition. This is clear from the structure of the statute, which requires BOCs to prove that their markets are open to competition before they are authorized to provide in-region long distance services.

Ameritech Order, ¶ 18. Congress' purpose in providing this sequence for entry (first local competition, then interLATA authorization) was to "create[] a critically important incentive for BOCS to cooperate in introducing competition in their historically monopolized local telecommunications markets." Id., ¶ 14. Further, the Commission underscored that "Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied." Id., ¶ 43.

8. Although the SCPSC has purported to make findings about BellSouth's compliance with the competitive checklist, and the openness of its market to competition, public statements by the SCPSC and its members make clear that it disagrees with the

sequencing established in the Act and disagrees with Congress' determination that checklist compliance and local competition should precede interLATA authorization. For example, in deciding to support BellSouth's Section 271 application, the SCPSC reasoned that it need not concern itself with whether BellSouth was complying with its non-discrimination obligations as they pertain to "service quality" because these concerns could be addressed in Commission enforcement proceedings after interLATA authority is granted. See infra. As one Commissioner has stated, the SCPSC supports BellSouth's application because: "Customers in South Carolina are smart . . . . They can say, `I won't take BellSouth long distance until there's competition in the local market.'" Associated Press, July 25, 1997. Finally, the SCPSC has also made clear that it disagrees with the Act's provisions and this Commission's orders placing the burden of proof under Section 271 on BOCs.[3]

II. THE SCPSC'S VIEWS OF THE COMPETITIVE CHECKLIST AND THE COMMISSION'S REGULATIONS.

9. Under the Act, the Commission must play a critical role in implementation of the local competition provisions of the Act. First, the Act requires the Commission to adopt regulations to implement the provisions of section 251, and makes these regulations

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[3] In direct conflict with the Act and this Commission's orders, the SCPSC held that there is a "presumption in favor" of BOC entry into long distance absent "a detailed factual showing [by opponents of BOC entry] that competitive harm is likely to result from such entry." SCPSC SGAT Order at 62-63.

binding on state commissions in their review of arbitrated interconnection agreements and SGATs. See §§ 252(c)(1) and (f)(2). Second, the Act requires that in reviewing a BOC petition for interLATA authorization, the Commission must find that the petitioning BOC has fully implemented or generally offers all items in the competitive checklist, including access to unbundled network elements, interconnection and resale in accordance with the terms of sections 251(c) and 252(d). § 271(d)(3). Although the Act requires that this latter determination be made after consultation with the state commission, the Commission must make its own independent finding of compliance.

10. Since the Act became law, BellSouth has taken a very narrow view of its obligations under sections 251 and 252, including in particular its obligations to provide combinations of unbundled network elements at cost-based rates, to provide CLECs with access to all features and functions of the unbundled switch, and to provide for resale at a wholesale rate all services offered to end-users. The Commission, however, has repeatedly and emphatically rejected, and adopted regulations foreclosing, many of BellSouth's positions. Nevertheless, BellSouth has consistently, and successfully, urged the SCPSC to ignore the Commission's regulations, as explained below.

11. In its Local Competition Order, the Commission rejected arguments by BellSouth and other ILECs that access to the unbundled local switch did not include access to the vertical features within the switch, and that such features were retail services that could only be purchased under the "wholesale rate" provisions of the Act. Implementation of the Local Competition Provisions in the Telecommunications Act of

1996, First Report and Order ¶ 413 (Aug. 8, 1996) ("Local Competition Order"). The Commission also rejected BellSouth's argument that volume discounted offerings, or offerings pursuant to contracts, should not be made available for resale. Id., ¶¶ 948, 951. In addition, the Commission rejected arguments by BellSouth and other ILECs that the right to purchase unbundled network elements under the Act should be limited to carriers that have their own facilities, and that a CLEC should not be permitted to provide its own services by using exclusively unbundled network elements obtained from an ILEC at cost-based rates. Id., ¶ 328.

12. In arbitration and other proceedings conducted by the SCPSC subsequent to the release of the Local Competition Order, BellSouth has consistently urged the SCPSC to adopt the positions that the Commission rejected in its Local Competition Order. In the AT&T arbitration proceeding, with respect to the vertical features of the local switch, BellSouth contended that they "are themselves retail services and should therefore be priced as resold services and not unbundled network elements." Prefiled Testimony of Robert C. Scheye, Docket No. 96-358-C, Hearing No. 9585, Vol. 3 at 58 (SCPSC, Feb. 4, 1997). In addition, BellSouth argued that Contract Service Arrangements should not be made available for resale, but that if CSAs were to be offered for resale, the CLEC should not receive a wholesale discount. Id., at 26. Further, BellSouth argued that whenever "AT&T orders up [network] elements in a way where they are actually using BellSouth facilities to provide a whole service . . . that is resale." Opening Statement of Harry Lightsey, BellSouth, Docket No. 96-358-C, Hearing No.

9585, Vol. 1 at 27 (SCPSC, Feb. 3, 1997). BellSouth also argued that AT&T "should not be able to use only BellSouth's unbundled elements to create the same functionality as a BellSouth existing service (rebundling), i.e., it is not appropriate to combine BellSouth's loop and port to create basic local exchange service." Prefiled Testimony of Alphonso J. Varner, Docket No. 96-358-C, Hearing No. 9585, Vol. 2 at 427 (SCPSC, Feb. 3, 1997) (emphasis in original).

13. Notwithstanding its statutory obligation to apply in arbitrations the Commission's rules regarding unbundled network elements (including combinations and vertical features), and resale restrictions, the SCPSC adopted provisions that are expressly contrary to those rules. Thus, the SCPSC ordered that BellSouth provide vertical features as wholesale-priced resale services, rather than as part of the unbundled switching element, that BellSouth provide Contract Service Arrangements for resale without a wholesale discount, and that BellSouth provide combinations of unbundled networks elements at wholesale, rather than cost-based, rates.

14. When BellSouth filed its SGAT in South Carolina on May 8, 1997, its SGAT contained these same provisions violating the Act and the Commission's regulations. Thus, section II.G. of the SGAT included the same unlawful restriction on the use of unbundled network element combinations to provide local service, while section VI.A. provided that vertical features were available only as resale service. With respect to vertical features, BellSouth acknowledged that the Local Competition Order had held they were a feature and function of unbundled local switching, but argued that the SCPSC had

concluded -- at BellSouth's insistence -- that they should be made available to CLECs only as retail services for resale at a wholesale discount. Compare Prefiled Testimony of Alphonso J. Varner, Docket No. 97-101-C, at 37 (SCPSC, Apr. 1, 1997) (under the Local Competition Order, "[a]ll other features, including custom calling, local area signaling service, Centrex, and customized routing functions are also included in local switching") with Prefiled Testimony of Robert C. Scheye, Docket No. 97-101-C, at 48 (SCPSC, Apr. 1, 1997) ("unbundled local switching includes the capability to activate vertical features which are available as retail services" at a wholesale discount). In addition, SGAT § XIV.B.1. provided that BellSouth's contract service arrangements are available for resale "only at the same rates, terms and conditions offered to BellSouth's end users." In response to comments by AT&T and other CLECs that these SGAT provisions did not comply with the Act and the Commission's regulations, BellSouth's consistent refrain was that these issues had already been addressed by the SCPSC and should not be revisited:

> [I]ntervenors are unnecessarily complicating this docket by resurrecting issues that have already been resolved by this Commission.

Prefiled Supplemental Testimony of Robert C. Scheye, Docket No. 97-101-C, at 51 (SCPSC, Jun. 30, 1997).

15. Prior to the SCPSC's approval of the SGAT, the Eighth Circuit affirmed the Commission's regulations relating to combinations of unbundled network elements, availability of vertical features at cost-based rates as part of unbundled local switching, and availability of all retail services, including contract arrangements and discounted

offerings, for resale. AT&T and other CLECs submitted briefs and proposed orders to the SCPSC on July 22, 1997, pointing out that the SGAT violated the Act and these Commission regulations on its face, and requesting -- at a minimum -- that the SCPSC delay ruling to consider the impact of the Eighth Circuit's decision. Yet, only two days later, at an emergency session held to consider only BellSouth's SGAT, the SCPSC approved the SGAT and determined that BellSouth was in compliance with the competitive checklist.[4]

16. The fact that the SCPSC approved an SGAT that directly and clearly violated Commission regulations forecloses any claim that the SCPSC has "verified" BellSouth's compliance with the competitive checklist (which includes the Commission's regulations). Indeed, given the large discrepancies between BellSouth's SGAT and the Commission's regulations, it is obvious that the SCPSC sees its duty as something other than verifying compliance with the checklist, as construed by the Commission.

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[4] Although, on October 14, 1997, the Eighth Circuit granted petitions for rehearing with respect to the Commission's regulation relating to the obligations of ILECs to combine unbundled network elements, this decision does not in any way alter the fact that BellSouth filed an SGAT which clearly conflicted with binding Commission regulations and the SCPSC failed to require BellSouth to adhere to such regulations.

III. THE SCPSC'S SGAT AND SECTION 271 PROCEEDINGS.

17. The SCPSC's "findings" and "conclusions" regarding other checklist items, and CLECs' entry plans, should be given no more weight than its findings and conclusions regarding vertical features and services available for resale. Unlike other state commissions, the SCPSC does not assign an administrative law judge to contested proceedings. Thus, there was no person dedicated to review the record and make preliminary findings and recommendations to the SCPSC regarding the checklist or other section 271 issues. Although a staff attorney was assigned to the proceeding, he did not actively participate in the hearing and rendered no public recommendation to the SCPSC.[5]

18. The SCPSC held four days of hearings in a consolidated proceeding to consider BellSouth's proposed SGAT and Section 271 application. At the hearing, AT&T and other interested parties, including the South Carolina Consumer Advocate, presented abundant evidence showing that BellSouth's SGAT conflicted with the Act and Commission regulations in several material respects, and that BellSouth had failed to demonstrate that it had fully implemented or generally offered other checklist items. Although these parties presented ten witnesses over two days of hearings, BellSouth asked only four questions, in total, of two witnesses -- and three of the questions related to the

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[5] Although the SCPSC staff formally intervened in the proceeding, it advised the SCPSC the day before testimony was due that it would not be presenting any testimony. During the hearings, the staff attorney asked only one question, and that related not to checklist compliance, but to "slamming." See Questioning by F. David Butler, General Counsel, SCPSC, Docket 97-101-C, Hearing No. 9633, Vol. 2 at 80 (SCPSC, Jul. 7, 1997).

date a letter was submitted to BellSouth. At the conclusion of the hearing, AT&T suggested that the parties file post-hearing briefs assessing the evidence presented at the hearing. At BellSouth's urging, the SCPSC stated their preference to receive proposed orders.

19. On July 22, 1997, the parties submitted their proposed orders. BellSouth's proposed order, a copy of which is Attachment 2, contained affirmative findings and conclusions that supported its position on every disputed issue. It either misstated or ignored the contrary evidence in the record. On July 24, 1997, less than 48 hours after BellSouth's submission of its proposed order, the SCPSC -- including those commissioners who had returned from the NARUC conference in San Francisco the night before -- held an emergency meeting[6] at which it approved BellSouth's SGAT and found it in compliance with the competitive checklist.

20. On July 31, 1997, the SCPSC issued its order, a copy of which is provided as Attachment 3. The SCPSC's order is almost a verbatim copy of the proposed order submitted by BellSouth. Indeed, the order adopted by the SCPSC includes many of the same typographical errors as BellSouth's proposed order. Attachment 4 to this Affidavit contains excerpts of the SCPSC order showing, in "redlined" form, the few substantive changes from the BellSouth proposed order that were adopted nine days later by the SCPSC.

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[6] No explanation was given to the parties concerning why the meeting had to be held on July 24, 1997, rather than on the originally scheduled date of July 29, 1997.

21. The process from which the SCPSC order arose shows why the Commission should afford it no weight. Indeed, the order misstates both the applicable law and the evidence in the record on nearly every important issue, including those in the following areas: (1) CLEC entry plans; (2) BellSouth's provision of discriminatory access; (3) the "functional availability" of interconnection, unbundled network elements, and resale services; (4) nondiscriminatory access to BellSouth's OSSs; and (5) pricing.

A. CLEC Entry Plans

22. The SCPSC SGAT Order repeatedly misstates the record with respect to the plans of both AT&T and ACSI to provide facilities-based service in South Carolina. For example, the order states that AT&T had no plans to provide facilities-based service in South Carolina, a statement belied by the record:

SCPSC SGAT Order , p. 19:

> *[I]n the BST-AT&T Arbitration proceeding, AT&T testified at length that it had no plans for facilities-based competition in South Carolina.*

The Record:

> AT&T intends to pursue aggressively resale, unbundled network elements and interconnection, separately and in combination, to bring services throughout South Carolina to the greatest number of potential customers as soon as an agreement is reached.

Testimony of Jim Carroll, AT&T, SCPSC Docket 96-358, at 9 (Jan. 6, 1997).[7]

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[7] Relevant portions of Jim Carroll's and Joe Gillan's arbitration testimony are attached hereto as Attachment 5.

> [BellSouth's] criticism was that if you let them do this [obtain access to UNE combinations], they won't build. Well, I think the answer that Mr. Carroll gave, AT&T will build. Let's face it, there's nobody that's going to compete against BellSouth that wants to rely on them entirely. Everybody has an incentive to build.

Testimony of Joe Gillan, AT&T, SCPSC Docket 96-358, Hearing No. 9585, at 92 (Feb. 4, 1997).[8]

23. The SCPSC SGAT Order authored by BellSouth also states that ACSI testified that it competed only as a competitive access provider, and not as a provider of local exchange service. This statement is demonstrably false:

SCPSC SGAT Order, p. 19.:

> *ACSI . . . testified that it does not compete as a local service provider, but rather only as an access provider.*

The Record:

> In South Carolina ACSI has networks operational here in Columbia, Greenville, Spartanburg and in Charleston. Currently ACSI is reselling local exchange service in those markets.

Testimony of James Falvey, ACSI, Docket 97-101-C, Vol. 7, at 350 (SCPSC July 10, 1997) ("Falvey Testimony") (emphasis added).

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[8] Moreover, as described in greater detail in the affidavit of Mr. Carroll filed herewith, AT&T notified BellSouth throughout 1996 and 1997 that AT&T intended to provide local service in South Carolina by means of resale, UNEs and interconnection to AT&T facilities. Indeed, AT&T plans to begin providing facilities-based local service to business customers this month by means of AT&T Digital Link.

24. The SCPSC SGAT Order also states that ACSI had no plan to place facilities in South Carolina. Once again the SCPSC's "finding" is a figment of BellSouth's imagination:

SCPSC SGAT Order , p. 19.

> *ACSI testified that it had no business plan or firm commitment to place the necessary facilities in South Carolina to provide such [facilities-based local] competition.*

The Record:

> Q. Mr. Falvey, does ACSI intend to become a facilities-based provider in South Carolina?
>
> A. Yes, we do.
>
> * * *
>
> What we don't have here is the switch. And all I can say is that South Carolina is critical to our company. And we are coming with switched services . . . . Baltimore and New Orleans are right around the corner. South Carolina is not long after that. We are certainly not ignoring South Carolina.
>
> * * *
>
> Q. Do you have any plans to come to South Carolina and when?
>
> A. . . . I think early next year. And there are a couple of markets. We have a roll out, and we can't roll them all out at once. The switches are expensive and it takes manpower to do the implementation process. We have limited resources. So I think early next year you'll see us here.

Falvey Testimony, Vol. 7, at 355, 357, 360.

25. The SCPSC SGAT Order also states -- clearly erroneously -- that ACSI's present intent not to provide residential service was solely a business decision, and not related to any action by BellSouth:

SCPSC SGAT Order , p. 19.

> *ACSI stated that it had no intent to compete for residence customers in South Carolina. . . . ACSI's decision not to compete in South Carolina is not related to any action on the part of BST.*

The Record:

> ACSI is unable to provide local service to residential customers largely because BellSouth's pricing policies have created a price squeeze that makes it economically infeasible to serve the residential market.

Testimony of Riley M. Murphy, ACSI, Docket No. 97-101-C, at 9 (SCPSC, Jun. 20, 1997) ("Murphy Testimony").[9]

26. This misrepresentation of the record by BellSouth -- and its perpetuation by the SCPSC -- is made more objectionable by BellSouth's attempt in its application to bootstrap this false finding into a *certification* by the SCPSC under section 271(c)(1)(B) that qualifying providers in South Carolina have failed to implement their interconnection agreements within a reasonable time.[10] Thus, BellSouth repeatedly states that the SCPSC "certified" that CLECs were not taking reasonable steps to implement facilities-based competition in South Carolina. See, e.g., Br. at 3, 8. In fact, the SCPSC has never been requested to so certify and the SCPSC SGAT Order does not use the

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[9] Ms. Murphy's testimony was adopted at the hearing by James Falvey of ACSI. See Falvey Testimony, Vol. 7, at 324, 332.

[10] It is worth noting that the SCPSC did not approve AT&T's arbitrated interconnection agreement with BellSouth until June 20, 1997. The SCPSC SGAT Order was adopted by the SCPSC on July 31, 1997, just 41 days later.

words "certify" and "certification" at all in its discussion of local competition.

B. BellSouth's Provision of Nondiscriminatory Access

27. The SCPSC's BellSouth-drafted order also misstates or ignores the evidence in the record regarding BellSouth's obligation to provide CLECs nondiscriminatory access to its network elements. Two CLECs, Sprint and ACSI, submitted prefiled testimony and testified under oath at the hearing that BellSouth had failed to provide nondiscriminatory access to UNEs in Florida and Georgia, and, as a result, their customers had been disconnected, been unable to place calls, and, in fact, had canceled their service with these CLECs because of the inferior access provided by BellSouth. These experiences are relevant to BellSouth's application for South Carolina because BellSouth uses the same systems and procedures to provide access to services and its network elements throughout its nine-state region.

28. Sprint testified that BellSouth regularly misses its commitment to notify Sprint within 48 hours of an order's receipt if there is any problem with the order. Because of BellSouth's failure to meet this commitment, several of Sprint's customers have been taken out of service in error. Testimony of Melissa L. Closz, Sprint, SCPSC Docket No. 97-101-C, at 9 (June 20, 1997). In addition, Sprint's unbundled loop orders were delayed due to BellSouth facility problems, Sprint customers have been without service because of BellSouth's failure to identify facilities shortages promptly, and Sprint customers have been prevented from receiving calls due to three significant service interruptions that occurred between May 19 and June 6, 1997. Id., at 10-12. As a result,